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TAGS: [KIPR](#) [ETRD](#) [EINV](#) [EFIN](#) [ECON](#) [PGOV](#) [KCOR](#) [KE](#)

SUBJECT: AMBASSADOR URGES GOK TO BEGIN ENFORCING ITS
ANTI-COUNTERFEIT ACT OF 2009 AS PART OF GREATER REFORM AGENDA

REFS: (A) NAIROBI 283 (B) NAIROBI 0086
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Summary

1. In his keynote address at a March 11 workshop on brand protection and the observance of intellectual property rights organized by the Kenya Association of Manufacturers, Ambassador Ranneberger urged the Government of Kenya to begin enforcing the recently enacted Anti-Counterfeit Act of 2009 in order to protect Kenyan consumers and manufacturers. To combat the importation of fraudulent drugs, Kenya aims to bar code legitimate pharmaceuticals. Minister of Industrialization Henry Kosgey vows that he will have Anti-Counterfeit Agency inspectors hired and on the job by April 2009, but other Kenyan officials believe the agency will not be up-and-running before July. End Summary.

IPR Enforcement a Reform Imperative

2. US Ambassador Michael E. Ranneberger urged the Government of

Kenya (GOK) to "demonstrate its commitment to reform by taking urgent, dramatic action against the problem of counterfeiting" during his keynote address at a March 11 workshop on brand protection and observance of intellectual property rights organized by the Kenya Association of Manufacturers (KAM). The Ambassador called upon the GOK to begin swiftly the enforcement of the Anti-Counterfeit Act of 2009, saying that it is an essential component of the government's reform agenda. IPR enforcement, he explained, would bolster the rule of law and punish a criminal enterprise which harms Kenyan consumers, destroys jobs, and steals from legitimate businesses. The Ambassador emphasized that the law must also apply to government officials who profit by permitting fake goods to enter the market. "They must be stopped, and they should be punished," he stressed to an approving audience.

Need for EAC IPR Harmonization

¶3. KAM Chairman Vimal Shah added that for the new law to be truly effective Kenya's East African Community (EAC) sister states (Tanzania, Uganda, Rwanda, and Burundi) ought to enact and enforce similar legislation, saying "this law however must also be put into place in the other countries if the war (against counterfeit goods) is to be won." KAM chief executive officer Betty Maina said the organization is pushing for the EAC to harmonize its standards in order to combat counterfeiting. She admitted that "counterfeits are a huge challenge to Kenyan manufacturers," who lose upwards of KSh20 billion (\$400 million) in annual sales. Counterfeits, moreover, result in brand erosion and undermine consumer confidence. Consumers are at risk of taking adulterated drugs. According to Ms. Maina, nearly 40% of anti-malaria drugs in Kenya are fake.

Recent GOK Actions

¶4. In response to these concerns, the government announced that it has created a new nine-member Pharmacy and Poisons Board to stem the flow of bogus medicines and to ensure that all pharmaceuticals sold and used in Kenya are safe, therapeutically effective, and meet acceptable standards. Medical Services Minister Anyang' Nyong'o announced March 11 that his ministry is holding talks with Nokia about bar coding approved drugs. The following day, the Kenya Bureau of Standards (KEBS) issued new guidelines requiring that products destined for the export market be tested for quality and informed local manufacturers and importers that all goods declared for transshipment must obtain an EAC-required standardization mark. The new policy guidelines respond to complaints from local manufacturers who charge that importers are off-loading low quality goods passed through Mombasa port as transshipment cargo. Henceforth, KEBS will not allow transshipment cargo to be offloaded absent the EAC standardization mark.

¶5. In mid-February 2009, Minister of Industrialization Henry Kosgey vowed that the Anti-Counterfeit Agency, as provided in the Anti-Counterfeit Act of 2009, would be launched by April. However, senior officials with the Kenya Industrial Property Institute and the Kenya Copyright Board told a visiting Department of Commerce-State-USPTO delegation, in country for a USG-sponsored March 19-21 green technology and bio-prospecting workshop, that they believe the inspection agency won't be in operation before early July 2009. In contrast to the police, its inspectors would have the authority to inspect any premises suspected of manufacturing illicit goods and arrest, without a warrant, any person suspected of importing, producing, warehousing, and/or trading in counterfeit goods.

¶6. Below are the Ambassador's prepared remarks to the Kenya Association of Manufacturers' March 11, 2009, Brand Protection and Anti-Counterfeit Conference:

Begin Text. Ladies and Gentlemen:
I am delighted to be with you today. But first, I want to assure you that I AM the real Ambassador of the United States to Kenya. Do not be fooled by imitations.

But seriously, because counterfeiting products and brands is a very

grave matter, I wish to commend the Kenya Association of Manufacturers for holding this conference on Brand Protection and Anti-Counterfeiting to reveal to the Kenyan people both how badly they are being misled by false products but also, how badly they are hurt, sometimes very literally, by those who falsify

Let me start by giving a simple illustration that many of you might have experienced. If you buy malaria medicine and follow your doctor's instructions, you should get well. But if the medicine is a complete fake - or a weaker version than your doctor prescribed - you will get worse instead of better. This happens far too often in Kenya.

In this modern inter-dependent age, we are all consumers. We need food and clothing for our families, fuel for our cars, medicine when we are ill, and all the other necessities that we often take for granted. All of these things cannot be provided by our local communities, and so we must find these products in stores and shops we trust. Over time, we have come to trust certain names to give us a quality product at a fair price. It may be local or international, but we recognize the name and appreciate the value of labor and ingredients that have gone into what we eat, wear and use in our households.

But what happens when someone steals that product name and packages inferior and even harmful goods under that name? We buy what we think is the trusted product, but it makes us ill, wears out rapidly and causes us to spend additional time and money to buy more goods and even seek medical help. It is only then - too late -- that we question our earlier judgment about the quality of these products.

In addition to having a very negative impact on the consumer, counterfeiting has a hugely negative impact on companies. Responsible Kenyan and international companies know that their most precious asset is their name. If you buy from East African Cables or Eveready, Bidco or Procter and Gamble, you know you will have a high quality product. Every dollar or shilling they spend in quality control, manufacturing, employee training and salaries, social responsibility and community support is an investment not only in the quality of their products, but also in the sterling reputation of their names.

Unfortunately counterfeiting of brand names and products is far too common all over the world. All they need do is copy a package, substitute an adulterated or even entirely fake substance in the package, and sell it as flour, cooking oil or medicine, with no one the wiser, retailer or consumer, until its use proves its inferiority or harm.

If you buy fake Nivea skin cream and it harms you, will you buy Nivea skin cream again? You might believe that the fake was real, and decide that Nivea is a bad product. Even if you know that real Nivea is of high quality, how can you tell the fake from the genuine product?

I have seen photographs of counterfeit factories where sewage is used to make fake toothpaste, which is then exported to East Africa and the United States. When we buy fake skin cream that burns our skin, or fake batteries that last half as long as they are supposed to, we have been cheated.

Counterfeiting is dangerous and destructive. The producer, the wholesaler, the retailer and especially the consumer all lose - and we can't always measure how far down the chain this damage runs. The work you do every day and the money you earn from that labor is the same as for workers all over the world. By the same token, the products you can buy should be every bit as good as those sold elsewhere in the world. But when false products are foisted on you, your labor and your money are debased, and you are cheated. Kenya has been inundated by a flood of fake products over the last few years, and the number of fake products continues to rise.

Every person who profits from fake products, who permits fakes to enter the country, who turns a blind eye to the law of the land, is participating in a criminal enterprise. He is directly harming the people, destroying Kenyan jobs and stealing from legitimate Kenyan businesses. They should be stopped, and they should be punished by the law.

The problem of counterfeiting relates directly to the broader challenge of implementing the reform agenda and ending the culture of impunity. Only by strengthening the institutions of government to make them more transparent and accountable, and bolstering the rule of law, can counterfeiting be ended. Just as the reform agenda will not be fully implemented without the peaceful pressure of the Kenyan people, so too the Kenyan people must be in the forefront to combat counterfeiting. Citizens who are duped by counterfeit products must register their concern to Kenyan officials; they must complain and insist that applicable laws and regulations be implemented to stop counterfeited products either from being made in Kenya or from being brought into the country.

The problem of counterfeiting also relates directly to the problem of corruption. Officials who benefit from allowing counterfeit products into the market directly harm the Kenyan people. They must be held accountable.

Today I call on the Kenyan government to implement rapidly the anti-counterfeiting law in order to fulfill their responsibilities to protect the Kenyan people. I commend the Parliament for passing this important legislation. I urge the government to demonstrate its commitment to reform by taking urgent, dramatic action against the problem of counterfeiting. Such action will show the Kenyan people that the coalition government is, as we say, walking the talk.

As all Kenyans know, with the recently inauguration of a "son of Kenya" as President of the United States, Kenya has an historic opportunity to further expand its already strong partnership with the United States.

There are two very important upcoming specific opportunities. The government has indicated its interest in sending a trade and investment mission to the U.S. during the first half of this year, and the AGOA forum will be held in Kenya later this year. I have emphasized, however, - and reiterate today - that these will not prove successful unless the government takes credible steps to move forward with the reform agenda, including taking bold steps against corruption.

Fighting counterfeiting is an essential part of this reform agenda. Doing so is a crucial step, as part of a broader economic reform agenda, in order to attract U.S. investment. Other elements of the economic reform agenda are related to the anti-counterfeiting effort such as, for example, not proceeding with the retrograde step of imposing a new international standards mark.

Implementation of the political reform agenda and economic reform agendas is inextricably linked in order to move this country forward in a way that will promote the welfare of all Kenyans. Just as it helped press for resolution of the crisis last year, the Kenyan private sector must now playing a leading role in pressing for implementation of the reform agenda in order to start the process of fundamental change that all Kenyans want to see. If not, the opportunity Kenyans gained as a result of the crisis and formation of the coalition government will be lost, with tragic consequences.

I salute the Kenya Association of Manufacturers for exerting leadership to fight counterfeit products and brand theft. This is an important show-and-tell conference that will demonstrate to the government and the people of Kenya just how serious and widespread this issue is, and what can be done on all levels to combat it. This conference highlights to the Kenyan people that the time of doing business as usual has passed. Many Kenyan officials have yet to realize this, but they are increasingly hearing a rising chorus from the Kenyan people on the need for fundamental change. The private sector is today helping to lead that chorus in its advocacy for change that will directly benefit all Kenyans.

Fighting counterfeiting is a major U.S. priority. You can count on our strong support.

Thank you. End Text.

Ranneberger